IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 544 of 2004

1. Sunil Kumar S/o Shri Kamal Kishore
   C/o Rohtash Bhatia
   33 Civil Lines
   Roorkee
   District Haridwar
2. Shri Kamal Kishore
   S/o Shri balram Kishore
3. Smt. Radha Rani W/o Shri Kamal Kishore
   Both R/o 229/33 Saket Colony
   North Civil Lines
   Muzaffar Nagar … Applicants

Versus

1. State of Uttaranchal
2. Priyanaka Gupta
   D/o Shri Indresh Mehta
   R/o 32 Saraswati Soni Marg
   Dehradun … Opposite Parties

Sri Arvind Vashisth learned counsel for the applicant.
Sri Pankaj Miglani learned counsel for the opposite party No. 2
Sri H.C. Pande learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

Heard learned counsel for the parties and perused the record.

This is petition has filed by the petitioners for quashing the chargesheet dated 27.07.2004 against the petitioners under Section 498-A, 323, 504 I.P.C. and 3/4 of the Dowry Prohibition Act.

The record shows that the counter and rejoinder affidavits have been exchanged.

Learned counsel for the petitioners has argued that in this case the decree of divorce was granted on 10.11.2003 and thereafter the First Information Report has been lodged against them by the opposite party no. 2 on 22.06.2004 only to harass them. He has submitted that in fact, on

the basis of the evidence collected by the police as yet, no case is made out against them.

Learned counsel for the opposite party no. 2 has argued that the decree of divorce has not become final as the same has been put to challenge by way of the appeal and the appellate court has passed a conditional order staying the operation of the order of the court concerned who has passed the decree for divorce.

In view of the record available before the court, I come to the conclusion that the decree of divorce has been obtained by the petitioner in an exparte manner and the same has been put to challenge by way of the appeal. The appellate court has passed the conditional order.

The matter is with regard to the divorce is still sub judice.

However, this fact cannot be ignored that the chargsheet has now been submitted in the case under Sections 498-A, 323, 504 I.P.C. and 3/4 Dowry Prohibition Act.

The connection raised on behalf of the petitioners to this aspect that the case is not made out against them relates to the question of fact and it is open for the petitioners to raise this arguments before the court below at the stage of framing the charge against them.

At this stage, I do not find any abuse of process and any flagrant injustice to be caused to the petitioners. To my mind this petition is devoid of any force at this stage.

However, the petitioners shall surrender before the court below in order to obtain the bail and the court below is directed to dispose of the bail application as early as possible expeditiously.

It would be open for the petitioners to challenged the further proceedings pending before the court concerned under Section 498-A, 323, 504 I.P.C. and 3/4 Dowry Prohibition Act by filing the separate petition in this regard in view of the subsequent development if any takes place in the case, in future.

Accordingly, with the aforesaid observations, the petition is disposed of finally.

The stay order dated 01.12.2004 passed by this Court stands vacated.

(B.C. Kandpal, J.)

23.04.2005
ASWAL